

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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**STEVEN COLLAZO,**

**Plaintiff,**

**vs.**

**9:06-CV-941**

**JAMES PAGANO, Food Service Manager, Great Meadow  
Correctional Facility; DR. EDMUNDO NUNEZ, Great  
Meadow Correctional Facility Physician; and GARY  
Z GREENE, Superintendent, Great Meadow Correctional  
Facility,**

**Defendants.**

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**APPEARANCES:**

Steven Collazo  
97-A-6812  
V Great Meadow Correctional Facility  
PO Box 51  
Comstock, NY 12821-0051  
Plaintiff, *Pro Se*

Hon. Andrew M. Cuomo, Attorney General of the State of New York  
Bruce J. Boivin, Esq., Assistant Attorney General  
The Capitol  
Albany, New York 12224-0341  
Attorney for Defendants

W **Hon. Norman A. Mordue, Chief U.S. District Judge:**

**MEMORANDUM-DECISION AND ORDER**

Defendants move (Dkt. No. 22) before United States Magistrate Judge David R. Homer for an order revoking plaintiff's *in forma pauperis* ("IFP") status and conditionally dismissing the complaint, subject to the timely payment of the filing fee. Magistrate Judge Homer issued a Report and Recommendation (Dkt. No. 31) recommending that the motion be granted, the order granting plaintiff's IFP status be vacated, and the complaint be dismissed unless plaintiff pays the

filing fee within 30 days of the filing of an order herein. Magistrate Judge Homer further recommends that plaintiff be barred from filing any IFP complaints in the Northern District of New York unless he is under imminent danger of physical injury. Magistrate Judge Homer's recommendations are based on his finding that three or more of plaintiff's prior actions have been dismissed as frivolous, malicious, or failing to state a claim. *See* 28 U.S.C. § 1915(g).<sup>1</sup>

The Court accepts and adopts Magistrate Judge Homer's analysis and his conclusion that three or more of plaintiff's prior actions have been dismissed within the meaning of section 1915(g). Plaintiff's IFP status is revoked and he is barred from filing any IFP complaints in the Northern District of New York unless he is under imminent danger of physical injury.

Within the time to file objections to the Report and Recommendation, as extended by this Court (Dkt. Nos. 32, 34), plaintiff paid the filing fee. Thus, so much of Magistrate Judge Homer's Report and Recommendation as recommends conditional dismissal of the complaint unless plaintiff pays the filing fee within 30 days is moot.

It is therefore

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ORDERED that the Report and Recommendation of United States Magistrate Judge David R. Homer (Dkt. No. 31) is rejected in part as moot, and is otherwise accepted and adopted as set forth herein; and it is further

ORDERED that defendants' motion (Dkt. No. 22) is denied in part as moot and is

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<sup>1</sup>

Section 1915(g), part of the Prisoner Litigation Reform Act, provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

otherwise granted as set forth herein; and it is further

ORDERED that plaintiff's *in forma pauperis* status is revoked; and it is further

ORDERED that inasmuch as plaintiff has paid the filing fee, the case shall go forward and the pretrial scheduling order (Dkt. No. 19), which was stayed by order of Magistrate Judge Homer (Dkt. No. 25) during the pendency of this motion, shall be modified to provide as follows: the deadline for filing nondispositive motions is March 30, 2008; the deadline for discovery is August 30, 2008; the deadline for motions to compel is September 30, 2008; the deadline for dispositive motions is December 30, 2008; and in all other respects the pre-trial scheduling order remains in full force and effect; and it is further

ORDERED that plaintiff is barred from filing any *in forma pauperis* complaints in the Northern District of New York unless he is under imminent danger of physical injury.

IT IS SO ORDERED.

March 6, 2008  
Syracuse, New York



Norman A. Mordue  
Chief United States District Court Judge

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